

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. Contract ID Code Firm-Fixed-Price	Page 1 Of 15		
2. Amendment/Modification No. P00035		3. Effective Date 2004MAY28		4. Requisition/Purchase Req No. SEE SCHEDULE		5. Project No. (If applicable)	
6. Issued By TACOM WARREN BLDG 231 AMSTA-AQ-AD TODD BURROWS (586)753-2490 WARREN, MICHIGAN 48397-5000 HTTP://CONTRACTING.TACOM.ARMY.MIL EMAIL: BURROWST@TACOM.ARMY.MIL			Code W56HZV	7. Administered By (If other than Item 6) SUPSHIP NEW ORLEANS 2300 GENERAL MEYER AVE NAVAL SUPPORT ACTIVITY, BLDG. 16 NEW ORLEANS, LA 70142-5700			Code N63124
				SCD C	PAS NONE	ADP PT N63124	
8. Name And Address Of Contractor (No., Street, City, County, State and Zip Code) BOLLINGER / INCAT USA, L.L.C. 8365 HIGHWAY 308 LOCKPORT, LA. 70374-3954				<input type="checkbox"/>	9A. Amendment Of Solicitation No.		
				<input type="checkbox"/>	9B. Dated (See Item 11)		
				<input checked="" type="checkbox"/>	10A. Modification Of Contract/Order No. DAAE07-02-C-T060		
TYPE BUSINESS: Large Business Performing in U.S.				<input type="checkbox"/>	10B. Dated (See Item 13) 2002SEP27		
Code IUDC0		Facility Code					
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS							
<input type="checkbox"/> The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing items 8 and 15, and returning _____ copies of the amendments: (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.							
12. Accounting And Appropriation Data (If required) ACRN: AJ NET INCREASE: \$2,500,000.00							
13. THIS ITEM ONLY APPLIES TO MODIFICATIONS OF CONTRACTS/ORDERS It Modifies The Contract/Order No. As Described In Item 14.							
KIND MOD CODE: G							
<input type="checkbox"/>	A. This Change Order is Issued Pursuant To: The Contract/Order No. In Item 10A.			The Changes Set Forth In Item 14 Are Made In			
<input type="checkbox"/>	B. The Above Numbered Contract/Order Is Modified To Reflect The Administrative Changes (such as changes in paying office, appropriation data, etc.) Set Forth In Item 14, Pursuant To The Authority of FAR 43.103(b).						
<input checked="" type="checkbox"/>	C. This Supplemental Agreement Is Entered Into Pursuant To Authority Of:						
<input type="checkbox"/>	D. Other (Specify type of modification and authority)						
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return _____ copies to the Issuing Office.							
14. Description Of Amendment/Modification (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) SEE SECOND PAGE FOR DESCRIPTION							
Contract Expiration Date: 2005DEC31							
Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.							
15A. Name And Title Of Signer (Type or print)				16A. Name And Title Of Contracting Officer (Type or print) MARCIA CZAR CZARM@TACOM.ARMY.MIL (586)574-6278			
15B. Contractor/Offeror (Signature of person authorized to sign)		15C. Date Signed		16B. United States Of America By _____ /SIGNED/ (Signature of Contracting Officer)		16C. Date Signed 2004MAY28	
NSN 7540-01-152-8070 PREVIOUS EDITIONS UNUSABLE				30-105-02		STANDARD FORM 30 (REV. 10-83) Prescribed by GSA FAR (48 CFR) 53.243	

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- SECTION A - SUPPLEMENTAL INFORMATION
1. Modification 35 is a bilateral modification to definitize the Cargo Handling System (CHS) effort that was ceiling priced and partially funded in Modification P00018, under CLIN 0010AA.
 2. Modification P00018 established a total ceiling price of \$5,000,000.00 for the Cargo Handling System under CLIN 0010AA. The final definitized settlement is \$5,000,000.00.
 3. CLIN 0010AA is hereby increased from \$2,500,000.00 by \$2,500,000.00 to \$5,000,000.00.
 4. H.4.5.1 "Removal of Cargo Handling Systems" has been added to section H.
 5. Two clauses were deleted from Section H: "Limitation of Government Liability" and "Price Ceiling."
 6. Two clauses will be changed (in a subsequent modification) to reflect the definitization of the Cargo Handling System in Section I: "Limitaiton of Government Liability" and "Contract Definitization." There is a problem with the clause database and these clauses cannot currently be accessed to change.
 7. The Contractor and the Government hereby acknowledge that any and all claims for adjustment the Contractor may have on the above CLIN are fully satisfied in the above adjustment, and the Government is hereby released from any liability for this CLIN.
 8. Except for the changes contained herein, all other terms and conditions remain unchanged and in full force and effect.

*** END OF NARRATIVE A 037 ***

Name of Offeror or Contractor: BOLLINGER / INCAT USA, L.L.C.

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0010AA	<p>SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS</p> <p><u>CARGO HANDLING SYSTEM</u></p> <p>NOUN: TSV ACTD OSD FUNDS PRON: E132C289EH PRON AMD: 01 ACRN: AJ AMS CD: 30603750D8Z</p> <p>\$144,058.00 is included in CLIN 0010AA to cover the removal of the Cargo Handling System.</p> <p>(End of narrative B001)</p> <p><u>Inspection and Acceptance</u> INSPECTION: Origin ACCEPTANCE: Origin</p> <p><u>Deliveries or Performance</u> DLVR SCH PERF COMPL <u>REL CD</u> <u>QUANTITY</u> <u>DATE</u> 001 0 11-NOV-2003</p> <p>\$ 5,000,000.00</p>		LO		\$ 5,000,000.00

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SECTION G - CONTRACT ADMINISTRATION DATA

PRON/ LINE AMS CD/ <u>ITEM</u> <u>MIPR</u>		OBLG STAT/ <u>ACRN</u> <u>JOB ORD NO</u>		INCREASE/DECREASE <u>PRIOR AMOUNT</u> <u>AMOUNT</u>		CUMULATIVE <u>AMOUNT</u>
0010AA	E132C289EH	AJ	1	\$	2,500,000.00	\$ 5,000,000.00
	30603750D8Z		32C289			
				NET CHANGE	\$ 2,500,000.00	

SERVICE <u>NAME</u>		NET CHANGE <u>BY ACRN</u>	<u>ACCOUNTING CLASSIFICATION</u>		ACCOUNTING <u>STATION</u>	INCREASE/DECREASE <u>AMOUNT</u>
Army		AJ	97	30400110131C1C09P306037255Y S20113	W56HZV	\$ 2,500,000.00
						NET CHANGE \$ 2,500,000.00

		PRIOR AMOUNT <u>OF AWARD</u>	INCREASE/DECREASE <u>AMOUNT</u>		CUMULATIVE <u>OBLIG AMT</u>
NET CHANGE FOR AWARD:	\$	38,693,103.08	\$	2,500,000.00	\$ 41,193,103.08

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SECTION H - SPECIAL CONTRACT REQUIREMENTS

H-2 FAR 52.212-4, CONTRACT TERMS AND CONDITIONS-COMMERCIAL ITEMS (MAR 2001)

Several provisions below have been tailored pursuant to FAR 12.302(a). Others normally appearing within this clause are located in the list and text of the Lease General Terms and Conditions, located in paragraph H.3.

ASSIGNMENT. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C.3727).

CHANGES. The Contracting Officer may at any time, by written order, make changes within the general scope of this contract, including, but not limited to, vessel modifications specified within Section C hereof, or to the place of delivery specified herein. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, the parties shall negotiate an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract accordingly. Failure to agree to any adjustment shall be a dispute under the Disputes clause, however, nothing in this provision shall excuse the Contractor from proceeding with the contract as changed.

DISPUTES. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

DEFINITIONS. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

EXCUSABLE DELAYS.
(See Lease General Terms and Conditions H-3 .)

INVOICE. The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized,) to the address designated in the contract to receive invoices. An invoice must include --

- (1) Name and address of the Contractor;
- (2) Invoice date;
- (3) Contract number, contract line item number and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent; and
- (8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Contractors are encouraged to assign an identification number to each invoice.

PATENT INDEMNITY. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

PAYMENT. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. If the Government makes payment by Electronic Funds Transfer (EFT), see 52.212-5(b) for the appropriate EFT clause. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

TAXES. The contract price includes all applicable taxes and duties of the Contractor's governmental jurisdictions.

TERMINATION FOR THE GOVERNMENT'S CONVENIENCE. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. In addition, the Government shall immediately take all steps necessary to effect redelivery of the vessel to the Contractor, as per H.3.15. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the remaining term of the contract from date of notice of termination to lease end, plus

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reasonable charges including finance charges, the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. These charges are in addition to any lease closing costs that the Contractor is entitled to under H.4.5. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any percentage of the lease payments or work performed or costs incurred which reasonably could have been avoided.

TERMINATION FOR CAUSE. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

WARRANTY.

(See Lease General Terms and Conditions H-3.)

OTHER COMPLIANCES. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

- (s) ORDER OF PRECEDENCE. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:
- (1) The schedule of supplies/services.
 - (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
 - (3) The clauses at DFARS 252.212-7001 and FAR 52.212-5.
 - (4) Addenda to this solicitation or contract, including any license agreements for computer software.
 - (5) Solicitation provisions if this is a solicitation.
 - (6) Other paragraphs of this clause.
 - (7) The Standard Form 1449.
 - (8) Other documents, exhibits, and attachments.

(End of Clause)

H.3 LEASE GENERAL TERMS AND CONDITIONS:

H.3.1 INSPECTION/ACCEPTANCE (Tailored pursuant to FAR 12.302(a)).

Inspection/Acceptance

(1) Surveys. The Contractor and Government shall each appoint surveyors at their own expense for the purpose of determining and agreeing in writing to the condition of the vessel at the time of delivery and redelivery hereunder. The delivery survey shall commence immediately prior to delivery of the vessel at Hobart, Australia and shall take no longer than three days to complete. The vessel shall not be placed on-hire until inspection is completed, and the contracting officer or her authorized representative accepts the vessel. Upon completion of the survey, the contracting officer shall either accept the vessel and begin hire; reject the vessel if the contracting officer determines that the vessel is not as warranted or otherwise does not comply with the requirements of Section C herein; or conditionally accept the vessel subject to correction of any deficiency within a reasonable period of time, provided, that conditional acceptance shall occur only if the deficiency or nonconformance is of a minor nature, and does not interfere substantially with the Government's usage of the vessel. Upon redelivery of the vessel to the Contractor, the Contractor and Government shall each appoint surveyors, again at their own expense, to determine whether the vessel is redelivered in accordance with the applicable provisions herein. The redelivery survey shall be conducted while the vessel is still on-hire.

The On-Hire and Off-Hire surveys shall include a survey of the underwater hull areas to be conducted at a minimum, by a diver appointed

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by the Contractor and a diver appointed by the Government.

(2) Inventory. A complete inventory of the Vessel's entire equipment, outfit, appliances and all consumable stores on board the Vessel shall be made by the Government in conjunction with the Contractor on delivery and again on redelivery of the Vessel. At the time of delivery and redelivery, the Government and the Contractor, respectively, shall assume responsibility for all bunkers, lubricating oil, water and provisions, paints, oils, ropes and other consumable stores in the Vessel at the then current market prices at the ports of delivery and redelivery respectively.

H.3.2 DELAY

The Contractor shall be considered in default for any delay in performing this contract unless circumstances causing the delay are beyond the reasonable control of the Contractor and without its fault or negligence. Such circumstances include acts of God or the public enemy, pirates, or assailing thieves; arrest or restraint of princes, rulers, or people; seizure under legal process, but only if bond is promptly furnished to release the vessel; acts of the Government in either its sovereign or contractual capacity; fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, blockade, riot, or insurrection. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith. The Contractor shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence. None of the exceptions identified in this provision shall affect the Contractor's warranties concerning the condition of the vessel.

H.3.3 RESERVED

H.3.4 WARRANTY

The Contractor shall provide a warranty against defects in workmanship or materials for a period of twelve (12) months from date of delivery of the vessel, or longer period depending on the term of warranty provided by the equipment manufacturer. The items covered under this warranty and the duration of the specific warranties are detailed in attachment 003 to this contract. The Contractor warrants that the vessel performing under this Lease shall be in full conformity with the requirements of this Contract at the time of delivery.

The Contractor warrants that the vessel and all associated equipment shall, at delivery, be in full compliance with all applicable international conventions and all applicable laws, regulations, and other requirements of the United States and nation of registry. The vessel shall be delivered in class of a recognized classification society and be in compliance with all current safety, health, and pollution regulations promulgated by appropriate authorities, including the latest applicable IMO regulations and Chapter 8 of the current International Code of Safety for High-Speed Craft ("HSC"). The Contractor further warrants that in accordance with the statement of work detailed in Section C.4 of this contract the Vessel shall have on board all certificates, records, or other documents required by the aforesaid conventions, laws, regulations and requirements.

For the term of the warranty, should the Contractor fail to honor any term or condition of the warranty, the Vessel may be placed off-hire in accordance with clause H 3.10.

The Contractor is responsible to repair breaches of this warranty. The Contractor shall repair/replace non-conformances or defect promptly at a port to which the parties agree. In the event the Contractor disputes a non-conformance the Contractor shall, upon written direction from the Contracting Officer, effect repair of the vessel, subject to the Disputes clause of this contract.

H.3.4.1 Procedure for Processing Warranty Claims

H.3.4.1.1 In accordance with Special Provision H.3.4 hereof, entitled, "Warranty," and H.3.12, entitled, "Contractor's Obligation," the following procedure shall be used to determine, during the term of the warranty provided by the Contractor, whether any structural failure or failure of equipment on board the vessel could reasonably lead to the conclusion that the failure is due to the fault of the Contractor, and therefore can potentially be pursued as a claim under Section H.3.4 of the contract; and if such failure is reasonably considered a warranty claim, how the claim shall be processed.

H.3.4.1.2 When any equipment failure occurs aboard the vessel, if the officer in charge of the vessel believes that correction of the failure is required for reasons other than regular maintenance as covered in H.3.12, the Government shall proceed as follows:

H.3.4.1.2.1 The officer in charge of the vessel shall immediately contact the Contractor and the Contracting Officer to obtain input concerning the cause of the failure. In doing so, the officer in charge shall describe to the Contractor and the Contracting Officer the circumstances of the failure, including the manner in which the vessel was being operated during a period of 24 hours immediately prior to the occurrence (or any other information that the Contractor may reasonably request). The Contractor shall recommend to the Government how to proceed, including whether new or reconditioned parts may be used to effect the repair. The Contracting Officer must authorize any repair procedure that will be used.

H.3.4.1.2.2 Alternatively, if time does not permit awaiting the Contractor's input, the officer in charge of the vessel shall immediately effect repairs, and also immediately notify the Contractor and the Contracting Officer of his decision to do so. Any

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procedure used to repair a failure under the circumstances of this paragraph shall be subject to review by the Contractor and review and approval by the Contracting Officer, and notice of such approval or otherwise to the officer in charge of the vessel.

H.3.4.1.3 If, under paragraph H.3.4.1.2.1 above, the parties agree that the failure is due to the fault of the Contractor; and, the Contractor and the officer in charge of the vessel, with approval of the Contracting Officer, agree on the procedure to be used in effecting repairs, the officer in charge will submit a claim for reimbursement for the repairs to the Contracting Officer. The Contracting Officer will review and approve the claim before forwarding it to the Contractor for reimbursement.

H.3.4.1.4 If, under paragraph H.3.4.1.2.2 above, the officer in charge of the vessel effects repairs without first obtaining authorization of the Contracting Officer, the officer in charge will, as soon as possible, but not later than 48 hours after repairs take place, concurrently submit a claim for reimbursement for the repairs to both the Contractor and the Contracting Officer. The Contractor will then provide its position to the contracting officer within five business days of receipt of the claim concerning whether the failure is the responsibility of the Contractor in accordance with the warranty provision, and whether the Contractor agrees that appropriate repair procedures were used by the Government. "Appropriate" shall be construed to mean the use of materials, parts or procedures that are consistent with sound industrial, technical, and maritime practice and undertaken by persons trained in the use and maintenance of such machinery. "Trained" shall mean that the personnel have some knowledge of what they are doing, not that they are experts. The Contracting Officer will review all the facts about the repair, including the Contractor's position, and shall accordingly require reimbursement, or inform the Contractor that the repair expense is considered to be for the account of the Government.

H.3.4.1.5 When a claim is made by the officer in charge of the vessel under H.3.4.1.3 or H.3.4.1.4 above, where practicable, the claim must include a detailed fault analysis including verification of failure mode from the relevant equipment supplier or their authorized agent. The detailed fault analysis shall include at a minimum the operating environment of the vessel at the time, details of the incident, details of any damage sustained and estimate of repairs needed. Consideration of these claims shall be based on values of the parts obtained from rebuilt parts and component exchange programs run by the relevant equipment supplier.

H.3.4.1.6 In the event the parties cannot reach agreement on either the issues of entitlement or quantum with respect to any claim, the Contracting Officer shall unilaterally issue a decision subject to the "Disputes" provision hereof. All correspondence relating to above paragraphs shall be submitted in writing to the authorized Contractor's representative and the Contracting Officer.

H.3.5 DELIVERY

The vessel and all associated equipment shall be delivered to the Government at Hobart, Australia not later than 1600 hours local time (place of delivery). The Contractor must give written notice of readiness during office hours to the appropriate Government representative at the port or place of delivery on a working day. The Government shall commence inspecting the vessel within a reasonable amount of time thereafter, but no longer than 24 hours after proper tender of the notice of readiness, excluding non-working day hours. Hire shall commence upon acceptance of the vessel by the Government, but not before the delivery date stated in the schedule, unless approved in writing in advance by the Contracting Officer.

The Government reserves the right to cancel this lease at no cost should the Contractor fail to make the vessel or associated equipment ready in accordance with the provisions set forth in this contract, without prejudice to any claims the Government may otherwise have against the Contractor under the contract. If the Contractor anticipates that the vessel will not be ready for delivery as required herein, it may notify the Government in writing no later than 10 days prior to the delivery date, stating the anticipated new date of delivery. The Government shall then declare whether it will cancel or take delivery of the vessel. Should the Government elect not to cancel or should it fail to reply within five working days of receipt of such notification (as applied at the Government's place of business), then, unless otherwise agreed, the proposed new delivery date and time will replace the original date and time.

The vessel and all associated equipment shall be seaworthy, equipped and supplied in accordance with the statement of work detailed in Section C of this contract. The vessel will also be in all respects ready for operation in accordance with C.3 of Section C of this contract. Any associated equipment and all cargo-handling equipment shall upon delivery as described herein be rigged, secured and operable. The vessel's holds and decks shall be clean and in all respects ready for use as intended by this contract, failing which the vessel shall be off-hire from the time of rejection until she is deemed ready by the Government.

H.3.6 RESERVED

H.3.7 LEASE PERIOD

Performance of the Government's lease shall be for one year periods pursuant to H.4.7, "Options," and may commence upon Government acceptance of the vessel as described in the provisions entitled, "Inspection/Acceptance" and "Delivery."

H.3.8 LEASE HIRE

The rate of hire for the vessel to be delivered and the services to be performed under this contract shall be as specified in Section B of the solicitation/contract, in accordance with applicable payment provisions set forth therein. Payments shall be considered payment in full for all services of the vessel and associated equipment under the lease, including all overtime, penalty time, bonuses, payments

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and emoluments payable to Contractor's employees for services under this charter, irrespective of the geographic scope of said service and including the carriage of ammunition and hazardous cargo.

H.3.9 PORTS AND PLACES

The Government shall exercise due diligence to order the vessel to safe berths or places that the vessel can approach, lie at, and depart from always accessible and always afloat, including alongside vessels or lighters reachable on her arrival and designated by the Government.

The vessel shall not be required to enter or remain in any icebound port or area, nor any port or area where lights, lightships, markers or buoys have been or are about to be withdrawn by reason of ice, nor where on account of ice there is risk that, in the ordinary course of events, the vessel will not be able safely to enter and remain in the port or area or to depart after completion of loading or discharging. The vessel shall not be obliged to force ice, but, subject to the Contractor's prior approval, may follow ice-breakers when reasonably required, with due regard to her size, construction and class.

H.3.10 OFF-HIRE

After delivery of the vessel in accordance with the terms of this contract, the vessel shall remain on hire until it is redelivered, except in the event that the vessel is unable to comply with the reasonable instructions of the Government on account of:

- i. any defect, breakdown, or deficiency that falls within the warranty provisions in H.3.4;
- ii. any dry docking in accordance with H.3.13;
- iii. any arrest of the vessel at the suit of a party where a claim is not caused by the Government, its agents or its subcontractors;
- iv. any delay occasioned by any breach by the Contractor of any obligation or warranty in this contract.

In the event of any of the contingencies described above, the payment of hire shall cease for all time lost until the vessel is again ready and in a ready state to resume her service from a position not less favorable to the Government than that at which such loss of time commenced. When the period of time lost to the Government on any one occasion is less than four (4) consecutive hours, the hire shall not be reduced for such period.

The cost of fuel consumed while the vessel is off-hire, as well as all port charges, pilotages and other expenses incurred during such period and consequent upon the putting in to any port or place other than that to which the vessel is bound, shall be borne by the Contractor. Contractor shall present to the contracting officer a statement certified by it or its authorized agent showing the amount of fuel on board at the time the off-hire period commenced and the amount of fuel on board when the off-hire period ended. The Government shall be credited for the cost of the fuel consumed during the off-hire period and also reasonable expenses incurred in loading such fuel, with such costs based upon costs at the previous refueling point.

The Contractor shall assume risk of loss of the vessel during the periods that the vessel is off-hire pursuant to this paragraph, subject to reasonable prior notification by the Contracting Officer.

H.3.11 TIME LOST

Any time during which the vessel is off hire as described in the provision entitled, "Off- Hire", may be added to the lease period, at the sole option of the Government. Such option shall be declared not less than two months before expected redelivery, or no later than two weeks after the event if it occurs less than two months before the expected redelivery.

The Government may, by written notice, cancel this lease at no cost to the Government whenever, in any given 365 day period, for any reason whatsoever, more than 30 cumulative days are lost pursuant to H.3.10, "Off-Hire". Failure to cancel the lease after thirty days are lost shall not prejudice any other rights of the Government, or any later right of the Government to cancel this lease. No remedy conferred by this paragraph upon the Government is intended to be exclusive of any other remedy available to the Government.

H.3.12 GOVERNMENT'S RIGHTS AND OBLIGATIONS

Control and Designation of Vessel. The vessel shall, during the lease period, be in the full possession and at the absolute disposal for all purposes of the Government and under the Government's complete control in every respect. Furthermore, the Government shall be entitled to rename and designate the vessel a United States Army Vessel.

Operation of Vessel. The Government warrants and undertakes that the vessel will be operated in conformity with Chapter 18 of the High Speed Craft Code.

Expenses of Operation. The Government shall man, victual, navigate, operate, supply and fuel the vessel whenever required during the lease period and shall pay all charges and expenses of every kind and nature whatsoever incidental to the use and operation of the vessel under this lease, including any local taxes.

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Maintenance and Classification of Vessel. The Government shall perform all scheduled maintenance of the vessel that is designed to be performed by the vessel's crew, as set forth in an Appendix to this contract. Except as provided in the clause entitled, "Contractor's Obligation," the Government shall maintain the vessel, her machinery, appurtenances and spare parts in a good state of repair and efficient operating condition, in accordance with good commercial maintenance practice. The Government shall have the use of all outfit, equipment and appliances on board the vessel at the time of delivery, provided the same or their substantial equivalent shall be returned to the Contractor on redelivery in the same good condition as when received, ordinary wear and tear excepted. The Government shall from time to time during the lease period replace such items of equipment as shall be so damaged or worn as to be unfit for use. The Government shall ensure that all repairs to or replacement of any damaged, worn or lost parts or equipment be effected in such a manner (both as regards to workmanship and quality of materials) as not to diminish the value of the vessel. The Government shall keep the vessel so that it will have the unexpired classification of +1A1 R1 HSLC Cargo EO.

Provision and Accounting of Spare Parts. The Contractor will provide an inventory of craft operational or insurance spares which belong to the craft. Provision of these spares will ensure the Contractor provides maximum operational availability to the Government. Accounting for usage of the spares will be dependent on whether spares are consumed for purposes of regular maintenance (in accordance with this section) or if usage constitutes a warranty claim (H.3.4). It shall be the obligation of the Government to replace all operational or insurance spares consumed. A monthly accounting will be performed whereby spares consumed as part of regular maintenance will be for the account of the Government, and items consumed for purposes of warranty will be for the account of the Contractor and invoiced by the Government to the Contractor.

H.3.13 CONTRACTOR'S RIGHTS AND OBLIGATIONS

Dry Docking. The Contractor shall perform scheduled dry docking at a mutually agreed shipyard, which will occur once during the term of the lease, between 12 and 24 months after delivery. The Contractor's responsibility shall consist of: 1) all hull and machinery repair work which must be undertaken in order for the vessel to comply with DNV classification requirements; and, 2) provide DNV Class surveyors and all classification society expenses associated with dry-docking and repairs. Such effort shall be for the account of the Contractor.

Hire During Dry Docking. When scheduled dry docking occurs, hire shall be suspended from the time the vessel is placed in the dry dock of a mutually agreed shipyard, until the vessel is again ready for service or for a maximum period of 7 days, whichever is earlier. The Contractor shall assume risk of loss of the vessel from the time that the Government relinquishes control of the vessel to the shipyard, until control of the vessel is returned to the Government.

Underwater Bottom Survey. The Contractor shall perform scheduled underwater bottom survey (incorporating a video survey only) at a mutually agreed location, which will occur once during the term of the lease, between 9 and 15 months after delivery. The Contractor's responsibility shall consist of all hull and machinery repair work which must be undertaken in order for the vessel to comply with DNV classification requirements. Such effort shall be for the account of the Contractor.

Hire During Underwater Bottom Survey. When the scheduled underwater bottom survey occurs, hire shall be suspended from the time the vessel arrives at the entrance to the mutually acceptable location, for a maximum period of 3 days. The Contractor shall assume risk of loss of the vessel from the time that the Government relinquishes control of the vessel to the shipyard, until control of the vessel is returned to the Government.

Other Contractor Repairs. As directed by the contracting officer, the Contractor shall accomplish all voyage and other repairs to the vessel that are beyond the capability of the vessel's crew. When the Contractor receives notice that the vessel is in need of repair pursuant to this paragraph, the Contractor shall make a repairman available at the next intended port of call for the vessel within 48 hours of the vessel's intended arrival time or within 96 hours if the intended port of call is not in the continental United States, excluding Alaska (CONUS). The vessel shall be off-hire for any time lost as a result of the repairmen's failure to arrive within this time, except that off-hire shall not occur while the Contractor's representative is denied access to the vessel for reasons beyond his control or the control of the Contractor. All such repairs shall be for the account of the Government, except when they are repairs under the warranty provision of this contract.

H.3.14 BUNKERING

Upon delivery of the Vessel, the Contractor shall present to the Contracting Officer a statement certified by the Contractor or its authorized agent showing the amount and grade of fuel on board at the time of delivery, with such additional verification as the Contracting Officer may require. The Government shall pay the Contractor for such fuel at the current market price at the port of delivery upon certification and verification of such statement by the Contracting Officer.

The Government shall pay for the on-hire bunker survey if performed by an independent surveyor and required by the Contracting Officer. The Contractor shall provide additional bunkers as may be required by the Government prior to the acceptance of the vessel, and the Government shall reimburse the Contractor for all costs directly connected with the bunkering of the additional fuel, including, but not limited to, lighterage, dockage or similar charges, and applicable taxes.

The Government shall ordinarily supply or cause to be supplied any or all the fuel required by the vessel during the period of this

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charter. The grade of such fuel is to be specified by the Contractor, and the grade supplied shall be at least the grade specified, unless otherwise agreed to by the parties.

Upon redelivery of the vessel as described in provision H.3.6, the Contractor shall credit the Government for any remaining fuel in the vessel upon presentment of a statement certified by the Government to the Contractor, showing the amount and grade of fuel on board at that time. The Contractor shall credit the Government for such fuel at the current market price at the port of redelivery.

H.3.15 VESSEL CHANGES AND REDELIVERY

Contractor-Performed Changes. The Government may, from time to time during the tenure of the lease, direct the contractor to make modifications to the vessel pursuant to the Changes clause of the contract. Any such modifications, along with those the Contractor is specifically required to include at the time of vessel delivery, will be left in place by the Government at the time of redelivery, subject to provision H.4.5, "Lease Closing Costs."

Government-Performed Changes. The Government shall make no structural changes to the vessel's hull or machinery without in each instance first securing the Contractors' approval thereof. The Government shall be at liberty to install any equipment or defensive armament (including demagnetization by installed equipment or other process such as degaussing, wiping or deperming), to install any additional gear or equipment for loading, carrying or discharging cargoes, and to repaint the vessel. Such work shall not contravene any applicable law of the United States or regulation made pursuant thereto. Such equipment, armament, materials and gear so fitted will be considered government-furnished property under the terms of FAR 52.245-1, which is incorporated by reference into this contract. Any such changes may be left in place by the Government at the time of redelivery, also subject to provision H.4.5, "Lease Closing Costs."

Redelivery. The vessel shall be re-delivered to the Contractor at the expiration of this lease at a port or place to be agreed upon and the vessel will remain onhire until redelivered. The Government shall give the Contractor not less than 20 days notice of the expected date of redelivery. Upon redelivery, the vessel shall be in the same order and condition as when the vessel was delivered to the Government, except for changes discussed in this paragraph that are subject to the clause at H.4.5, "Lease Closing Costs." The vessel shall bear DNV Class notation +1A1 HSLC R1 Cargo EO, and shall have unexpired class certificates without conditions, fair wear and tear not affecting class excepted. Upon redelivery of the vessel, the holds and spaces of the vessel shall be swept clean by the Government with refuse removed, unless during the period of this lease the vessel has carried in these spaces cargo with respect to which custom requires more complete cleaning, in which case the Government shall give such spaces the required cleaning.

H.3.16 WAIVER OF CLAIMS

All invoices or claims whatsoever for money due the Contractor under this contract must be submitted no later than one year after accrual of the claim, or such claim or invoice shall be deemed waived by the Contractor. Any claims arising under this contract shall be submitted in accordance with the Disputes provision herein.

H.3.17 RESERVED

H.3.18 RESERVED

H.3.19 SALVAGE

All salvage and towage performed by the vessel shall be for the Government's benefit, and the cost of repairing damage occasioned thereby shall be borne by the Government.

H.3.20 INVOICING AND PAYMENT

The Contractor shall be reimbursed by the Government for all the charges and expenses incurred by the Contractor for the Government's account as herein provided. Such amounts shall be paid upon presentation of vouchers, receipts or other documentation necessary to determine that the charges and expenses are fair and reasonable.

In addition to the items required by paragraph of the contract, Contractor will include: 1) the invoice number (no more than 18 alpha-numeric characters); 2) the CLIN; 3) the expenditure type; 4) the vessel name; 5) ports; 6) the project number; and, 7) the task number.

H.3.20.1 START OF WORK MEETING. The Contractor shall hold a teleconference no later than 14 days after award, to review and discuss overall program status.

H.3.20.1.2 START OF WORK-ACCEPTANCE MEETING. The contractor will host a Vessel Acceptance Meeting to be held at the Incat facility in Hobart Tasmania on 14-15 Nov 02. The contractor will provide the facilities and equipment necessary for this meeting, including chairs, podium, PA system, etc.

H.3.20.2 HIRE RATES. Hire under this lease agreement shall be payable at the applicable daily rates for CLINs 0005AA, 0006AA, and 0007AA and shall be invoiced at the expiration of each fifteen (15) days of the lease period. Except as otherwise provided herein, said

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hire rates shall be considered payment in full for all services of the Vessel and Associated Equipment under this lease . Said hire rates are exclusive of costs for fuel and port charges.

H.3.20.3 INSURANCE. The Contractor may invoice quarterly under the appropriate subCLINs of CLINs 0005,0006, and 0007, beginning with the initial delivery order for lease period, and then every three months thereafter for insurance, while the vessel is on hire. Insurances amounts for the option periods will be established prior to the beginning of such option periods, and shall also be reimbursed to the Contractor in quarterly payments as established above.

H.3.20.4 BOW T-FOIL. The Contractor may invoice 50% of the Bow T-foil's Material Costs immediately after Modification Award, with PCO Approval of the invoice and a conference call on June 30, 2003. The additional 50% of the material Costs may be invoiced on November 24, 2003, with PCO Approval of the invoice and a conference call on same date.

H.3.21 RESERVED

H.3.22 CONTRACTOR'S INSPECTION

Subject to agreement by the Government, which shall not be unreasonably withheld, the Contractor shall have the right at any time to inspect or survey the vessel or instruct a duly authorized surveyor to carry out such survey on its behalf to ascertain the condition of the vessel and satisfy itself that the vessel is being properly repaired and maintained. Subject to agreement by the Government, which shall not be unreasonably withheld, the Government shall also permit the Contractor to inspect the vessel's maintenance log books and, subject to Government security requirements, all on-board software-based stored data and maintenance systems whenever requested. Further, subject to Government's security requirements, the Government will during the lease period make available to the Contractor a dedicated local telephone line and access to the vessel's computer and data base systems in order for the Contractor to inspect and review the maintenance and performance of the vessel. Said inspections shall be for the account of the Contractor, to include off-hire if the vessel must be indisposed in order to conduct the inspection, except for inspections occasioned by damage to the vessel that is attributable to operation of the vessel by the Government, and that is not the fault of the Contractor.

H.3.23 RESERVED

H.3.24 NON LIEN AND INDEMNITY

The Government will not suffer, nor permit to be continued, any lien or encumbrance incurred by its agents, which might have priority over the title and interest of the Contractor of the vessel.

H.4 SPECIAL PROVISIONS

H.4.5 LEASE CLOSING COSTS

It is understood that if, at any time, notice of redelivery occurs, or the Government fails to exercise its option for the first year lease period, the Contractor may invoice Government for the amount agreed in CLIN 0002 for removal of vessel modifications. The Contractor agrees that the prices for initial delivery of the vessel, and the daily lease rate, do not include any costs associated with lease closing. Costs claimed for repair of damage to the vessel caused by the Government are excluded from this amount and will be negotiated at the time of redelivery.

H.4.5.1 REMOVAL OF CARGO HANDLING SYSTEM

Upon redelivery of the vessel the Owner is responsible for removing the Cargo Handling System. The cost of removal (\$144,058.00) is included in CLIN 0010AA. The Cargo Handling System's crane is Government Furnished Property, which the Owner will make every reasonable effort to dispose of at fair market value upon redelivery of the vessel. The money attained from this sale shall be credited back to the contract.

H.4.6 INSURANCE

The prices stated herein include Contractor-provided insurance for Hull and Machinery Risks, War and Strikes Risks and Protection & Indemnity, against loss of or damage to or liability of the vessel during the full duration of the respective lease periods, regardless of whether the vessel is on-hire or off-hire. The Government shall not be liable to the Contractor for any loss or damage beyond the amount of, or type of, loss covered by the insurance policies noted above. Accordingly, the government agrees that the vessel will be operated within class, and within the specifications of both the High Speed Craft Code and DNV classification.

Should the Government operate the vessel outside the High Speed Craft Code or in breach of its DNV Classification and the vessel suffers loss or damage then the Government shall be held liable for such loss or damage.

Furthermore, the Contractor shall have the right to immediately terminate the vessel lease and this contract upon notice by its technical representatives that the Government is operating, or intends to operate, the vessel outside DNV class rules or outside the regulations contained in the High Speed Craft Code, provided that, in such event, the Contractor will immediately notify the contracting

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officer of its intention to so terminate. In this event, the vessel shall immediately be subject to redelivery in accordance with the redelivery provision of the contract. Nothing herein shall be construed, however, to invalidate the coverage provided by the insurance policy during such period of redelivery, provided that redelivery then occurs by operation of the vessel within class and within any restrictions or limitations of the High Speed Craft Code and the DNV classification.

In the event of a claim under any of the vessel's insurance policies any deductible payable shall be paid by the Government. These deductibles are \$500,000 for Hull and Machinery (including additional perils), \$25,000 for protection and indemnity, and zero dollars for war and strikes risks, all of which deductibles will be subject to review for the second year of the charter period. The Contractor and the Government retain their right(s) to limit liability in accordance with International Convention. The Government acknowledges that the vessel's Protection and Indemnity policy does not cover U.S. Military crew or U.S. Military passengers. The renewal terms of the insurance policy for each option period of the charter are subject to review by underwriters at the end of the preceding year of the charter.

For purposes of this contract, liability beyond the insurance coverage noted in this provision, based on geographical operation of the vessel only, such liability shall accrue only if the government operates the vessel within Iraqi waters. Accordingly, the Government agrees that it will not operate the vessel within Iraqi waters unless the applicable War Risks insurance policy allows it to do so.

H.4.7 OPTIONS

H.4.7.1 Lease Periods. The Government reserves the right, at its sole discretion, to order three lease periods of the TSV-1X of one year each, at the daily rates specified at CLINs 0005AA, 0006AA, and 0007AA, as well as basic insurance and Persian Gulf insurance, in the amounts specified at CLINs 0005AB, 0006AB, 0007AB, and CLINs 0005AC, 0006AC and 0007AC, respectively, for the first, second, and third year lease periods, respectively. The second and third lease periods may be exercised only if the lease periods run consecutively and without interruption of lease hire. The Contracting Officer may exercise the option for the first year lease only by written notice to the Contractor no later than November 21, 2002. The Contracting Officer may exercise the option for the second and third year lease periods only by written notice to the Contractor at least 10 days prior to the expiration of each one year lease period.

H.4.7.2 Vessel Modifications. The Government reserves the right, at its sole discretion, to order additional modifications to the TSV-1X as set forth in the subparagraphs below, at the total amounts (or, if exercised on an unpriced basis, at the ceiling prices and corresponding limitations of liability) specified in the CLINs identified in the subparagraphs below. The Contracting Officer may exercise these options by written notice to the Contractor no later than 21 November 2002.

- a. Supply, appearing at CLIN 0004AA, as described at paragraph C.3 E(6) herein.
- b. Vehicle deck storage, appearing at CLIN 0004AB, as described at paragraph C.3E(6)a herein.
- c. Flagging and class, appearing at CLIN 0004AC, as described at paragraph C.4 herein.
- d. Documentation, appearing at CLIN 0004AD, as described at paragraph C.5 herein.
- e. Operational training, appearing at CLIN 0004AE, as described at paragraph C.8 herein.

H.4.7.3 The Government reserves the right, at its sole discretion, to order the installation of a center bow t-foil for the TSV-1X as set forth in section C.3.E(13), at the total amount of \$1,512,500.00 or, if exercised on an unpriced basis, at the ceiling price and corresponding limitation of liability) specified in the CLIN 0009. The Contracting Officer may exercise this option by written notice to the Contractor no later than 1 April 2003.

H.4.7.4 The Government will receive compensation for enhancing the value of the TSV through the installation of the center bow t-foil. This compensation will be negotiated at the termination of the lease.

H.4.8 LEASE EQUALIZATION CLAUSE

At the request of the Government, the daily lease rate has been predicated upon a 3-year lease term with a level daily lease payment. The actual lease obligation of the Government at lease inception is a minimum 1-year term with two additional 1-year option periods at the same daily lease rate. Because of the foregoing, if the lease is not continued past the first year, the lease rate will be repriced to reflect the premium commanded by a one year lease only resulting in an additional once-only lease equalization payment of \$2,029,400 that will be paid to the Contractor upon redelivery of the vessel.

If the government exercises its option to extend the lease for a second year but does not exercise its option to extend for the third year, the lease rate will be repriced to reflect the premium commanded by a two year lease only resulting in an additional once-only lease equalization payment of \$2,296,945 that will be paid to the Contractor upon redelivery of the vessel.

*** END OF NARRATIVE H 001 ***			
<u>Status</u>	<u>Regulatory Cite</u>	<u>Title</u>	<u>Date</u>
H-1 DELETED	52.216-24	LIMITATION OF GOVERNMENT LIABILITY	APR/1984
H-2 DELETED	252.217-7027	PRICE CEILING	DEC/1991

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SECTION I - CONTRACT CLAUSES

Status	Regulatory Cite	Title	Date
I-1 CHANGED	52.216-24	LIMITATION OF GOVERNMENT LIABILITY	APR/1984
I-2 CHANGED	252.217-7027	CONTRACT DEFINITIZATION	OCT/1998